

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GREGORY JOHN PIASECKI,

Defendant-Appellant.

UNPUBLISHED

May 11, 1999

No. 204024

Ottawa Circuit Court

LC No. 93-017129 FH

AFTER REMAND

Before: Gage, P.J., and Gribbs and Hoekstra, JJ.

MEMORANDUM.

In late 1993, defendant pleaded guilty to felonious assault, MCL 750.82; MSA 28.277, resisting or obstructing a police officer, MCL 750.479; MSA 28.747, and habitual offender, second offense, MCL 769.10; MSA 28.1082. On January 10, 1994, he was sentenced to enhanced terms of three to six years' imprisonment for the felonious assault conviction and two to three years' imprisonment for the resisting or obstructing conviction. This Court remanded the case for resentencing on the maximum terms of the sentences only, on grounds that the sentencing court failed to recognize its discretion in determining the enhanced maximums. *People v Piasecki*, unpublished opinion per curiam of the Court of Appeals, issued February 28, 1997 (Docket No. 173546). On remand, the trial court imposed the same sentences as before, with sentence credit for 1,081 days. Defendant appeals as of right, challenging only the amount of sentence credit awarded. We remand for a recalculation of sentence credit.

At the resentencing on April 28, 1997, defendant's counsel argued that defendant is entitled to 1,244 days of sentence credit for time already served in prison and on parole. The trial court only awarded defendant 1,081 total days of credit without any explanation of its reasoning, apparently excluding the time defendant had served on parole. Defendant contends he is entitled to additional sentence credit for time served on parole. In response, plaintiff contends that credit should not be awarded for parole time because there has never been any defect in defendant's underlying convictions.

Whenever a void sentence is set aside and a new sentence is imposed, any time served on the void sentence, including time spent on parole, must be credited against the new sentence imposed.

MCL 769.11a; MSA 28.1083(1); *People v Sims*, 38 Mich App 127, 131; 195 NW2d 766 (1972). Contrary to plaintiff's argument, this credit is not limited to cases where the conviction underlying the initial sentence was itself void or erroneous, but also applies in cases where, as here, only the initial sentence is set aside for resentencing. See, e.g., *People v Lyons (After Remand)*, 222 Mich App 319; 564 NW2d 114 (1997), lv den 456 Mich 952 (1998); *People v Sims*, *supra*.

Remanded for a recalculation of the amount of sentence credit consistent with this opinion. We do not retain jurisdiction.

/s/ Hilda R. Gage
/s/ Roman S. Gibbs
/s/ Joel P. Hoekstra